

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JERRY LEE ALSTON,	:	
	:	
Plaintiff,	:	C.A. No. 01C-07-039
	:	
v.	:	
	:	
DELAWARE GOVERNOR RUTH ANN	:	
MINNER; DELAWARE ATTORNEY	:	
GENERAL M. JANE BRADY;	:	
DELAWARE STATE POLICE AS AN	:	
ENTITY; CITY OF DOVER POLICE	:	
DEPT. AS AN ENTITY; PROBATION	:	
AND PAROLE AS AN ENTITY; QUASI	:	
POLICE AGENCIES; STATE OF DELA-	:	
WARE HUMAN RELATIONS COMMIS-	:	
SION; and BAYHEALTH MEDICAL,	:	
	:	
Defendants.	:	

ORDER

This 19th day of October, 2001, after consideration of the motions to dismiss submitted by Defendants Bayhealth Medical Center, the State Defendants¹ and the Dover Defendants² in the above-captioned matter, Plaintiff's answer thereto, as well as the arguments of the parties, it appears that:

¹ The State Defendants are identified as Delaware Governor Ruth Ann Minner, Delaware Attorney General M. Jane Brady, the Delaware State Police, the Delaware Department of Correction Probation and Parole, the Capitol Police, and the State of Delaware Human Relations Commission.

² The Dover Defendants are identified as the City of Dover and City of Dover Police Department.

Facts

1. On July 23, 2001, Plaintiff filed his *pro se* complaint in the above-captioned matter. This action appears to be an attempt to bring a class action³. It raises unclear criminal or tort actions against various entities, and relates to the death of one Reginald Hannah while in police custody (as well as to events that allegedly took place, including investigation of his death, subsequently).
2. Defendant Bayhealth Medical moves this Court to dismiss this action under Delaware Superior Court Civil Rule 12(b)(6) for the reason that Plaintiff's complaint fails to state a claim upon which relief can be granted. Bayhealth further argues that there are no facts in the complaint under which it may be held liable to Plaintiff.
3. The State and Dover Defendants move to dismiss on the basis that Plaintiff lacks standing to maintain an action on the basis of Reginald Hannah's death.⁴ They allege Plaintiff fails the test for standing set out by the Supreme Court in well-settled litigation, the most prominent of which is *Lujan v. Defenders of*

³ This Court has already determined that this is not a class action matter.

⁴ For the purposes of the opinion, Bayhealth does not allege the issue of standing.

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Wildlife,⁵ and the Delaware Supreme Court in *Monsanto Co v. Aetna Casualty and Surety Co.*⁶

⁵ 504 U.S. 555 (1992).

⁶ Del. Super., 565 A.2d 268 (1989)

4. As to Bayhealth’s motion, Plaintiff argues that there is no dispute regarding any material fact alleged in its complaint, and that the facts and statements raised therein “clearly suggest [that] the conduct of Bayhealth Medical does lead to the imposition, or the reasonable expectation . . . of liability.”⁷

5. Regarding the State and Dover Defendants’ motions, Plaintiff responds that he has standing to bring his claims on the basis of his status as an American citizen (and that he has raised various constitutional rights and issues which the Court recognizes), and claims this is “sufficient at law and sufficient clearly as a matter of law.”⁸ This is what is pled in his complaint.

Moreover, Plaintiff maintains that *Lujan v. Defenders of Wildlife* is not applicable to him because Plaintiff’s suit was filed as a class action. He represents the class of black citizens that are “ethnically identifiable as of the black race and residing in Dover, Delaware.”⁹ This Court has determined that this matter is not to be a class action.

⁷ Pl.’s Ans. to State’s Motion to Dismiss at 3.

⁸ Pl.’s Ans. to State’s Motion to Dismiss at 3,5.

⁹ *Id.* at 5.

*I. Bayhealth Medical's Motion to Dismiss
under Super. Ct. Civ. R. 12(b)(6)*

6. It is necessary to determine if Plaintiff has alleged sufficient facts to recover under any reasonably conceivable set of circumstances susceptible to proof under the complaint. Delaware's Supreme Court (commenting upon the brief of a *pro se* appellant) has "recognize[d] that some degree of leniency should be granted for *pro se* appeals, [however,] at a minimum, briefs must be adequate so that this Court may conduct a meaningful review of the merits of appellant's claim."¹⁰

7. As this Court has previously stated:¹¹

The test for sufficiency of a complaint challenged by a motion to dismiss under Superior Court Civil Rule 12(b)(6) is a general, broad test . . . "whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."¹² When applying this test, all of the well-pleaded allegations must be accepted as true by the Court.¹³

¹⁰ *Forst v. Wooters*, Del. Supr., No. 181, 1993, 1993 WL 370865, Moore, J. (Sep. 9, 1993)(ORDER).

¹¹ *Crowhorn v. Nationwide Mut. Ins. Co.*, Del. Super., C.A. No. 00C-06-010, Witham, J. (Apr. 26, 2001) Order at 4-5.

¹² *Spence v Funk*, Del. Supr., 396 A.2d 967, 968 (1978).

¹³ *Id.*

8. Here, even with leniency of the Court, Plaintiff does not appear to have alleged a cause of action under which he can recover against Bayhealth. Plaintiff raises vague allegations of constitutional violations and legal jurisdiction under 42 U.S.C. § § 1981, 1983;¹⁴ however, a cause of action under one of these provisions may only be brought against a governmental agent, or state actor.¹⁵ Bayhealth is not a governmental agency against whom such actions can be brought.

¹⁴ Complaint at 3.

¹⁵ *Jett v. Dallas Indep. School Dist.*, 491 U.S. 701 (1989)

9. Plaintiff also raises claims under various portions of Delaware’s criminal code.¹⁶ These section do not apply to Bayhealth, nor do private causes of action exist under the cited sections of the criminal code.

10. It is possible that Plaintiff is alleging tort claims against Bayhealth. It is difficult to establish a tort claim from the complaint, however, as Plaintiff does not allege the proper elements. For example, many torts require at least one of the three elements of duty, causation, or damages. Here, Plaintiff has alleged none of these elements as to Bayhealth.

11. As to the element of duty, Plaintiff’s complaint simply alleges that “[t]he listed Defendants all share a social and public responsibility for the conduct of the police as an agency.”¹⁷ The threshold establishment of a duty is a matter of law. *Brower v. Metal Indus.*¹⁸ No duty has been shown on the part of Bayhealth to the Plaintiff in this case. If Bayhealth had a duty respecting this matter, it was a duty applicable to Mr. Hannah or to permissible claimants under statute or common law only.

¹⁶ Complaint at 2, 12, alleging legal jurisdiction under 11 *Del. C.* § § 103 202, 467.

¹⁷ Complaint at 4.

¹⁸ Del. Supr., 719 A.2d 941 (1998).

12. The Plaintiff states that it is premature in terms of the complaint process to conclude the complaint failed (since it might become clear later on that Bayhealth was negligent, and then Plaintiff would not have joined this defendant). This Court's view is that many of Plaintiff's allegations could very well result in this Court permitting impermissible fishing expeditions to create causation. The Court will not allow that to take place. Plaintiff has not alleged the element of causation as to Bayhealth.¹⁹

13. As to the element of damages and relief, Plaintiff's only alleged injury appears to be that he suffers a "personal fear of [a] non-arrest interaction with the police."²⁰

14. None of the relief sought may be used to establish the element of damages for a tort claim. Moreover, there is no private cause of action to impound a grand jury, indict officers, or to implement new police policies, all of which Plaintiff apparently seeks to be ordered. Even if there is some remote possibility

¹⁹ The only allegation as to causation in this case is that Mr. Hannah was alive, in critical condition, when he was brought to Bayhealth/Kent General, but then he "died shortly after arriving." Complaint at 9. In his response to the motion to dismiss, Plaintiff states "there are statements that suggest the conduct of Bayhealth Medical could lead to imposition of liability . . . such proof cannot be reasonably known without the process of discovery and interrogatories (sic)." Pl.'s Ans. to Motion to Dismiss at 4.

²⁰ Complaint at 4. Plaintiff also states that the purpose of his complaint is "to expose errors in the Attorney General's report of June 1, 2001, and to identify a specific cause to impound a grand jury." Moreover, he seeks "the impoundment of a Grand Jury to achieve further fact finding due to discrepancies in terms of the time of death and sequence of events leading to the death of Mr. Hannah." He seeks new police protocols and a police review board. He requests freedom of information documents from the police, and indictments of police officers.

that an extraordinary remedy exists, such as a Writ of Mandamus, such remedy would not lie against Bayhealth, a private entity.

II. The State and Dover Defendants' Motion to Dismiss

15. For the above-noted reasons and rationale, this Court will also dismiss the cause of action against the Dover Defendants and the State Defendants.

16. Furthermore, Plaintiff does not have standing to assert claims against the Dover Police or State defendants. This Court has decided that Claimant's action has not been certified as a class action; therefore, the Plaintiff must have standing in order to recover as to any personal claims.

17. The doctrine of standing requires (1) that Plaintiff sustained an "injury in fact." This is described as the invasion of a legally protected interest which is (a) concrete and particularized to the Plaintiff and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and conduct complained of and; (3) it must be likely that the injury will be redressed by a favorable decision.²¹

18. Where the Plaintiff has not been injured personally, standing under this test is harder to establish.²² Plaintiff has not established the requisite injury in his complaint in order to maintain a personal cause of action against the State or

²¹ *Lujan* at 560-561.

²² *Id.*

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Dover Defendants.

19. Therefore, for the foregoing reasons, the Motions to Dismiss of Bayhealth Medical, the State Defendants, and the Dover Defendants are *granted*.

IT IS SO ORDERED.

J.

WLW/dmh

oc: Prothonotary

xc: Mr. Jerry Lee Alston

Mason E. Turner, Jr., Esquire

Richard W. Hubbard, Esquire

William W. Pepper, Sr., Esquire